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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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8 RUBEN PABLO, BONNIE COURSEY, and  
9 JOHN BAHR,

No. C 08-03894 SI

10 Plaintiffs,

**ORDER RE: AVAILABILITY OF  
PUNITIVE DAMAGES FOR CLAIMS  
BROUGHT BY PLAINTIFF BAHR**

11 v.

12 SERVICEMASTER GLOBAL HOLDINGS,  
13 INC., et al.,

14 Defendants.  
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16 On October 11, 2011, the Court held a final pretrial conference in the above captioned matter,  
17 which is set for jury trial beginning October 24, 2011. The Court issued its final pretrial scheduling  
18 order on October 12, 2011, wherein, *inter alia*, the Court denied plaintiffs' request for leave to amend  
19 plaintiffs Pablo and Coursey's complaint to add claims for punitive damages. (Doc. 339). Defendants  
20 thereafter sent a letter to the Court requesting advisement as to how it should proceed to preclude a  
21 punitive damages claim regarding the remaining plaintiff Bahr, whose separate amended complaint  
22 contained a claim for punitive damages. (Doc. 340). Defendants asked the Court whether additional  
23 briefing was required. *Id.* Plaintiffs responded with a letter stating that "no further briefing is  
24 necessary," and arguing that punitive damages are appropriate for their claims regarding failure to pay  
25 Bahr overtime. (Doc. 341) The Court will resolve this matter without additional briefing.

26 Under California law, when a new right not existing at common law is created by statute,  
27 punitive damages are unavailable. (Doc. 341) (*citing Turnbull & Turnbull v. ARA Transp., Inc.*, 219  
28 Cal. App. 3d 811, 826-27 (Ct. App. 1990)). California Labor Code Section 1194, allowing for claims  
for failure to pay to pay overtime, is one such right. Cal. Labor Code § 1194 (providing recovery for

1 the unpaid balance of the overtime compensation, including interest, reasonable attorney's fees, and  
2 costs of suit); *see, e.g., Gentry v. Superior Court*, 42 Cal. 4th 443, 471 (2007) (“[E]xemplary damages  
3 are not available in overtime suits.”); *Green v. Party City Corp.*, 2002 WL 553219 (C.D. Cal., 2002).  
4 However, plaintiffs seek to circumvent this rule by arguing that claims for overtime are equivalent to  
5 conversion, a common law tort. (Doc. 341). Every court that has examined this argument, including  
6 this one, has rejected it. *Santiago v. Amdocs, Inc.*, 2011 WL 1303395 (N.D.Cal. Apr. 2, 2011)  
7 (dismissing a conversion claim because “cases consistently hold that a plaintiff cannot bring a  
8 conversion claim based solely on statutory wage and hour violations.”); *see also Madrigal v. Tommy*  
9 *Baham Group, Inc.*, 2010 WL 4384235 (C.D.Cal. Oct. 18, 2010) (noting that “several courts have  
10 expressly concluded that employees cannot bring a claim for conversion based on the failure to pay  
11 overtime wages under the Labor Code because the Labor Code’s remedies are exclusive.”)

12 Defendants’ request to preclude jury instructions allowing punitive damages is GRANTED.

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14 **IT IS SO ORDERED.**

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16 Dated: October 18, 2011

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19 SUSAN ILLSTON  
20 United States District Judge  
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